

RESOLUTION NO. 75637

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING AND AUTHORIZING THE NEGOTIATION, EXECUTION AND DELIVERY OF AN AGREEMENT FOR THE EXCHANGE OF INTERESTS IN REAL PROPERTY WITH TOD BROKAW LLC, A FIRST AMENDMENT TO SITE AND FACILITY LEASE AND A FIRST AMENDMENT TO GENERAL SUBLEASE AGREEMENT RELATING TO THE CITY OF SAN JOSE FINANCING AUTHORITY'S TAXABLE LEASE REVENUE BONDS, SERIES 2008F (LAND ACQUISITION REFUNDING PROJECT), AND AUTHORIZING OTHER RELATED ACTIONS

WHEREAS, the City of San José (the "City") and the Redevelopment Agency of the City of San José have heretofore entered into a Joint Exercise of Powers Agreement establishing the City of San José Financing Authority (the "Authority") for the purpose, among others, of having the Authority issue its bonds to finance the acquisition, construction and improvement of certain public capital improvements; and

WHEREAS, the Authority has heretofore determined to adopt and implement a program under which the Authority will provide financing for certain public capital improvements for the City; and

WHEREAS, for the purpose of providing funds to assist the City of San José (the "City") in refinancing the acquisition of certain real property situated in the City of San José and the City of Santa Clara, County of Santa Clara, State of California (the "Site"), and the improvements thereon (the "Facilities" and, together with the Site, the "Project"), the Authority issued its City of San José Financing Authority Taxable Lease Revenue Bonds, Series 2008F (Land Acquisition Refunding Project)" (the "Series 2008F Bonds"); and

WHEREAS, in connection with the issuance of the Series 2008F Bonds, the City, as lessor, leased the Project to the Authority, as lessee, pursuant to a Site and Facility Lease, dated as of June 1, 2008 (the "Site Lease"); and

WHEREAS, the Authority, as lessor, leased the Project back to the City, as lessee, (a) pursuant to an Operating Sublease Agreement, dated as of June 1, 2008, between the Authority, as lessor, and the City, as lessee (the "Operating Sublease Agreement"), for an initial term expiring on May 31, 2014, which term may be extended as provided therein, and (b) after the termination of the Operating Sublease Agreement, pursuant to the General Sublease Agreement, dated as of June 1, 2008, between the Authority, as lessor, and the City, as lessee (the "General Sublease Agreement") until the final maturity of the Series 2008F Bonds; and

WHEREAS, the Authority and the City have determined to terminate the Operating Sublease Agreement retroactive to June 30, 2010; and

WHEREAS, the City and TOD Brokaw, LLC, the owner of the parcel adjacent to the Site, wish to enter into an agreement for the exchange of property in order to modify irregular boundaries between their respective parcels so that the boundary line is straightened (the "Property Exchange"); and

WHEREAS, the proposed terms of the agreement between the City and TOD Brokaw LLC to effect the Property Exchange (the "Exchange Agreement") are described in general terms in a memorandum addressed to the governing board of the City of San José Financing Authority (the "Board") and to the City Council, dated October 25, 2010; and

WHEREAS, the City and the Authority now desire to modify the description of the Site contained in the Site Lease and the General Sublease Agreement in order to reflect the Property Exchange and the lot line adjustment that will result from the Property Exchange; and

WHEREAS, in order to modify the description of the Site, the City and the Authority desire to enter into (i) a First Amendment to Site and Facility Lease and (ii) a First Amendment to General Sublease Agreement (collectively, the "Lease Amendments"); and

WHEREAS, the execution and delivery of the Lease Amendments will require the consent of Bank of America, N.A., the credit provider (the "Credit Provider") with respect to the Series 2008F Bonds; and

WHEREAS, the Credit Provider has indicated its willingness to give its consent, subject to its review and approval of the final forms of the Lease Amendments and the other related documents; and

WHEREAS, the City Council has duly considered such transactions and wishes at this time to approve certain matters relating to said transactions in the public interest of the City;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:

Section 1. Approval of Exchange Agreement and Lease Amendments. The City Council hereby hereby authorizes the City Manager, or the City Manager's authorized designees (each, a "Designated Officer"), to negotiate, execute and deliver the Exchange Agreement, the First Amendment to Site and Facility Lease and the First Amendment to General Sublease Agreement as generally described in the memorandum addressed to the Board and the City Council, dated October 25, 2010, together with such additions thereto and changes therein as the Designated Officer shall deem necessary, desirable or appropriate upon consultation with the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 2. Official Actions. The Designated Officers, each acting alone, the City Clerk and any and all other officers of the City are hereby authorized and directed, for and in the name of and on behalf of the City, to do any and all things and take any and all actions, including execution and delivery of any and all documents, assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and documents, which they, or any of them, may deem necessary or advisable in order to consummate the execution and delivery of the Exchange Agreement and the Lease Amendments, including those required by the Credit Provider in connection with the City and the Authority obtaining the consent of the Credit Provider to their execution and delivery of the Lease Amendments.

ADOPTED this 16th day of November, 2010, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, HERRERA, KALRA,
LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: CONSTANT.

DISQUALIFIED: NONE.



CHUCK REED
Mayor



ATTEST:

LEE PRICE, MMC
City Clerk